IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7604 OF 2004

1. Jer Rutton Kavasmaneck,
   aged 79 years, residing
   at 193, Jupiter Apart-
   ment, Cuffe Parade,
   Colaba, Mumbai-400 005.

2. Darius Rutton Kavasmaneck,
   aged 52f years, residing
   at Adenwalla Building,
   Flat No.9, 2nd Floor,
   626, Homavazir Road,
   Parsi Colony, Dadar,
   Mumbai-400 014. .... Petitioners

Versus

1. Rusi Khambhatta,

2. Zarine Khambhatta,

both residing at ‘Sorab
House’ 607 B, Khareghat Road,
Dadar, Mumbai-400 014. .... Respondents

Mr. Shyam A.Divan i/by M/s. Dhru & Co.,
for the Petitioners.

Mr. Dinesh P. Shah for the Respondents.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

ORAL JUDGMENT:

Heard Advocate for the petitioners. Perused the records. Rule. By consent, rule is made returnable forthwith. Mr. Shah, learned Advocate appears and waives service on behalf of the Respondents.

2. Both the Courts below i.e. the trial Court as well as the Revisional Court, have rejected the plea of the Petitioners that the supplementary written statement which was prepared and declared as long back as in January, 1998 remained to the placed on record merely on account of oversight and lapse on the part of the Advocate for the Petitioners. Undoubtedly, the findings arrived at by both the Courts below disclose that the Petitioners had not furnished sufficient cause for delay in placing on record the supplementary written statement and on that count the request to allow them to place the supplementary written statement on record has been rejected.

3. Perusal of the affidavit filed by the Petitioners in support of the application for leave to place the supplementary written statement on record discloses a categorical statement on oath that the supplementary written statement was prepared as well as declared on 22nd January, 1998, however, merely by oversight it remained to be placed on record in time.

4. Undoubtedly, as lower Court has observed that long time after January, 1998 the issues in the suit were framed and the parties were put on guard as to the point on which they were required to lead their evidence and, therefore, it was obvious that it was to the knowledge of the Petitioners that certain facts were not brought on record by that time. Consequently, at that time the Petitioners ought to have been alert and ought to have taken the necessary steps to place on record the supplementary written statement.

5. It is well settled that there is no presumption that the parties are interested in delaying the

proceedings or that the parties are interested in filing their pleadings at belated stage. Besides, it was a specific case of the Petitioners that merely by oversight the supplementary written statement remained to be placed on record. The fact that the written statement was already prepared and even declared on 22nd January, 1998 goes to show that the Petitioners were sincerely interested in placing on record the facts which have been incorporated in the supplementary written statement, so that the Petitioners could effectively defend the case. This fact clearly discloses bonafide on the part of the Petitioners as regards their efforts to place on record all the necessary facts in their pleadings. In such circumstances, merely because there was a delay on the part of the Petitioners in placing the said written statement on record it cannot be said that they should be disallowed from bringing on record all the relevant facts which may perhaps be necessary and helpful to the Court to decide the case in just and proper manner and to deliver appropriate decision. Viewed from this angle, therefore, the findings arrived at by both the courts below merely on the

point of delay in placing the supplementary written statement on record cannot be sustained and are liable to be set aside, particularly considering the fact that such written statement was already declared on 22nd January, 1998. Needless to say that on account of such delay, the Respondents will be entitled to be compensated by way of costs.

6. In the result, therefore, the petition succeeds. The impugned orders are hereby set aside. The supplementary written statement which was prepared and declared on 22nd January, 1998 is allowed to be placed on record and the trial Court to proceed with the matter in accordance with law. Consequent to the Petitioners being allowed to place on record the supplementary written statement, the Petitioners shall pay costs of Rs.1,000/- to the Respondents. The payment of costs shall be the condition precedent to enable the Petitioners to place on record the supplementary written statement. In addition to this costs, the Petitioners shall also be liable to pay the costs in this petition.

7. Rule is made absolute in the above terms.

8. Issuance of certified copy expedited.

(R.M.S.KHANDEPARKAR, J.)